

Attorneys for Defendant

The Hon. Lonny R. Suko, Judge

James S. Berg (WSBA #7812)
LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
Phone: (509) 457-1515
Fax: (509) 249-0619
Email: jsberg@lbplaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VALICOFF FRUIT CO., INC., a Washington
corporation,

Plaintiff,

vs.

TUFF AUTOMATION, INC., a Michigan
corporation,

Defendant.

NO. CV-13-3057-LRS

**STIPULATION AND
PROTECTIVE ORDER RE
CONFIDENTIALITY OF
DOCUMENTS PRODUCED IN
DISCOVERY**

I. STIPULATION

Plaintiff Valicoff Fruit Co., Inc. ("Plaintiff") and defendant Tuff Automation, Inc. ("Defendant"), the parties to this action (collectively, "the parties"), through their respective counsel, hereby stipulate to the entry of the following Protective Order to ensure the confidentiality of proprietary business information, personnel information and other information of a sensitive and/or private nature that has been or may be requested in discovery.

**STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 1**

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 AGREED this 19th day of December, 2014.

2 Attorneys for Plaintiff

Attorneys for Defendants

3 By: s/ James S. Elliott
4 James S. Elliott (WSBA #28420)
5 HALVERSON NORTHWEST
6 405 E. Lincoln Ave.
7 P.O. Box 22550
8 Yakima, WA 98907
9 Phone: (509) 248-6030
jelliott@halversonNW.com

By: s/ James S. Berg
James S. Berg (WSBA #7812)
LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
Phone: (509) 457-1515
jsberg@lbplaw.com

10 II. PROTECTIVE ORDER

11 It is hereby agreed to by the parties in the above-referenced matter
12 that the following provisions shall apply to documents and materials
13 produced in discovery during this action until this Protective Order is
14 superseded. As used herein, "disclosing party" shall refer to the parties to
15 this action or to third parties who give testimony or produce documents and
16 information. Paragraphs 1 through 19 herein apply, as the case may be, to all
17 confidential documents defined herein, provided, however, that Special
18 Rules apply to documents identified in *Defendant's Motion for Protective*
19 *Order* [ECF No. 17] as **PC Program, Programmable Logic Control (PCL**
20 **Program), Build Drawings** (for Nitrogen Generators and Carbon Dioxide
21 **Scrubbers)** and **Electrical Schematics**. Those Special Rules, which are based
22 upon the *Order Re Defendant's motion for Protective Order* [ECF No. 31], are
23 set forth in Paragraph 20 herein.

24 1. "Attorneys' Eyes Only" material shall consist of information that
25 the disclosing party and its counsel believe in good faith contains proprietary
26 information (in document form or otherwise), including but not limited to
27
28
29
30

STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 2

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 material constituting or concerning trade secrets or other confidential
2 contracts, agreements, negotiations, research, design, development, or
3 commercial information that the disclosing party reasonably believes is of
4 such a nature and character that unlimited disclosure of such information to
5 the receiving party will be harmful to the disclosing party or to its business
6 or will provide the receiving party a competitive advantage over the
7 disclosing party. The parties agree that this designation shall be used
8 sparingly and only for the purpose of protecting truly proprietary
9 information.
10

11 2. "Confidential" material shall be limited to other non-public,
12 proprietary information that the disclosing party and its counsel reasonably
13 believe is sensitive, but not so sensitive as to require protection under
14 Paragraph 1 above, whether embodied in physical objects, documents, or the
15 factual knowledge of persons.
16

17 3. This Agreement shall apply to all Attorneys' Eyes Only or
18 Confidential material in all answers, responses, documents, or deposition
19 testimony as well as in pleadings, discovery materials and papers, briefs,
20 summaries, notes, abstracts, or other documents which comprise, embody,
21 summarize, discuss, or quote from any such responses, documents, or
22 deposition testimony, including memoranda or work product by counsel,
23 their staff, or authorized outside consultants or experts.
24

25 4. In designating information as Attorneys' Eyes Only or
26 Confidential, a disclosing party shall make such a designation only as to
27 material which it in good faith believes is confidential or deserving of
28 Attorney's Eyes Only treatment. An Attorneys' Eyes Only or Confidential
29 designation shall be used by the parties to this litigation and designated third
30

**STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 3**

LARSON BERG & PERKINS PLLC

105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 parties solely for the purpose of conducting this litigation, but not for any
2 other purpose whatsoever.

3 5. In the absence of written permission from the disclosing part or
4 an order of the Court, information designated as Attorneys' Eyes Only
5 material shall be used solely for the purposes of this litigation, and may not
6 be disclosed except to the following persons:
7

8 (a) The attorneys working on this action on behalf of any
9 party, and the staff, stenographic and clerical employees and contractors
10 working under the supervision of such counsel;

11 (b) Any expert or consultant not employed by a party who is
12 employed, retained, or sought to be retained by any attorney described in
13 paragraph 5(a) to assist with preparation of this action for trial, with
14 disclosure only to the extent necessary to perform such work. Such experts
15 and consultants shall not be current employees of any party or employed by
16 a party within six (6) months prior to the disclosure of Attorneys' Eyes Only
17 material;
18

19 (c) Any person from whom testimony is taken, except that
20 such person shall only be shown copies of Attorneys' Eyes Only material in
21 preparation for or during his/her testimony, and may not retain any such
22 material; and
23

24 (d) The Court, jury, court personnel, court reporters, and other
25 persons connected with the Court.

26 6. In the absence of written permission from the disclosing party,
27 or an order of the Court, information designated as Confidential shall be used
28 solely for the purpose of this litigation, shall not be used for any other
29
30

1 purpose, and may not be disclosed except to the following persons, as set out
2 below:

3 (a) The attorneys working on this action on behalf of any
4 party, and the staff, stenographic and clerical employees and contractors
5 working under the supervision of such counsel;

6 (b) Any expert or consultant not employed by a party who is
7 employed, retained, or sought to be retained by any attorney described in
8 paragraph 5(a) to assist with preparation of this action for trial, with
9 disclosure only to the extent necessary to perform such work. Such experts
10 and consultants shall not be current employees of any party or employed by
11 a party within six (6) months prior to the disclosure of Confidential material;

12 (c) A party, or employees or agents of a party who are
13 assisting such party to work directly on this litigation, with disclosure only to
14 the extent necessary to perform such work;

15 (d) Any person from whom testimony is taken, except that
16 such person shall only be shown copies of Confidential material in
17 preparation for or during his/her testimony, and may not retain any such
18 material; and

19 (e) The Court, jury, court personnel, court reporters, and other
20 persons connected with the Court.

21 7. The persons described in Paragraphs 5(b)-(c) shall have access
22 to Attorneys' Eyes Only material and the persons described in Paragraphs
23 6(b)-(d) shall have access to Confidential material only after they have been
24 made aware of the provisions of this Agreement and have manifested their
25 assent to be bound thereby by signing a copy of the Acknowledgment
26 attached hereto as Exhibit A. By signing such Acknowledgment, each
27

28 **STIPULATION AND PROTECTIVE ORDER RE**
29 **CONFIDENTIALITY OF DOCUMENTS**
30 **PRODUCED IN DISCOVERY - 5**

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 individual who receives any Attorneys' Eyes Only or Confidential material
 2 hereby agrees to subject himself/herself to the jurisdiction of the US District
 3 Court, Eastern District of Washington State for the purpose of any
 4 proceedings relating to the performance under, compliance with or violation
 5 of this Agreement.
 6

7 8. The recipient of any Attorneys' Eyes Only or Confidential
 8 material as provided under this Agreement shall maintain such information
 9 in a secure and safe area and shall exercise the same standard of due and
 10 proper care with respect to the storage, custody, use and/or dissemination of
 11 such information as is exercised by the recipient with respect to its
 12 confidential information. Attorneys' Eyes Only and Confidential material
 13 shall not be copied, reproduced, summarized or abstracted, except to the
 14 extent that such copying, reproduction, summarization or abstraction is
 15 reasonably necessary for the conduct of this lawsuit. All such copies,
 16 reproductions, summaries, extractions, and abstractions shall be subject to
 17 the terms of this Agreement, and labeled in the same manner as the
 18 designated material on which they are based.
 19

20 9. Disclosing parties shall designate Attorneys' Eyes Only or
 21 Confidential material as follows:
 22

23 (a) In the case of documents, interrogatory answers,
 24 responses to requests for admission, and the information contained therein,
 25 designation shall be made by placing the following legend on every page of
 26 any such document prior to production: ATTORNEYS' EYES ONLY or
 27 CONFIDENTIAL. If a party inadvertently fails to stamp or otherwise
 28 designate a document or other information as Attorneys' Eyes Only or
 29 Confidential at the time of its production, that party may at any time
 30

**STIPULATION AND PROTECTIVE ORDER RE
 CONFIDENTIALITY OF DOCUMENTS
 PRODUCED IN DISCOVERY - 6**

LARSON BERG & PERKINS PLLC
 105 North 3rd Street
 P.O. Box 550
 Yakima, WA 98907
 (509) 457-1515
 (509) 249-0619 (fax)

1 thereafter stamp or otherwise designate in writing the document or other
2 information as Attorneys' Eyes Only or Confidential. Such document or other
3 information shall be treated as Attorneys' Eyes Only or Confidential
4 consistent with its designation beginning at the time of such designation.
5

6 (b) In the case of depositions, designation of the portion of the
7 transcript (including exhibits) which contain Attorneys' Eyes Only or
8 Confidential material shall be made by a statement to such effect on the
9 record in the course of the deposition or, upon review of such transcript, by
10 counsel for the party to whose Attorneys' Eyes Only or Confidential material
11 the deponent has had access. Counsel for either party has fourteen (14) days
12 after counsel's receipt of the transcript to designate in writing with notice to
13 all other parties, and the court reporter, material referenced in or attached to
14 a deposition transcript as Attorneys' Eyes Only or Confidential. During those
15 fourteen days, the entire deposition transcript, including exhibits, shall be
16 deemed Confidential, and shall be handled accordingly by all parties and
17 their counsel, unless during the deposition counsel states that information
18 raised at the deposition is Attorneys' Eyes Only in which case that portion of
19 the deposition identified by counsel shall be treated as Attorneys' Eyes Only
20 for the fourteen-day period.
21

22 (c) Any Attorneys' Eyes Only or Confidential material
23 produced in a non-paper media (e.g., videotape, audiotape, computer disks,
24 etc.) may be designated as such by labeling the outside of such non-paper
25 media, or the e-mail transmitting it, as Attorneys' Eyes Only or Confidential.
26 If a receiving party generates any "hard copy", transcription, or printout
27 from any such designated non-paper media, such party must treat each copy,
28
29
30

1 transcription, or printout as designated and label it in a manner effective to
2 ensure proper treatment.

3 10. A party shall not be obligated to challenge the propriety of an
4 Attorneys' Eyes Only or Confidential designation at the time made, but must
5 do so prior to seeking to use it in violation of this Stipulation. If any party to
6 this litigation disagrees with such designation, such party shall provide to the
7 disclosing or third party written notice of its disagreement with the
8 designation. The parties shall first try to resolve such dispute in good faith
9 on an informal basis. If the dispute cannot be resolved, the party challenging
10 the designation may request appropriate relief from the Court, but in any
11 event, such relief from the Court shall not be requested before seven (7) days
12 after the disclosing party or third party is served with said written notice;
13 provided, however, that any challenge to the propriety of a designation by a
14 third party shall be brought in the court from which the subpoena to the
15 third party was issued. The burden of proving that information has been
16 properly designated as Attorneys' Eyes Only or Confidential is on the party
17 making such designation.
18

19 11. Any party filing Attorneys' Eyes Only or Confidential material
20 with the Court (whether in pleadings, declarations, exhibits, or otherwise)
21 will first if feasible determine, prior to filing any motion to seal, and in
22 consultation with the designating party, as appropriate, whether the
23 document may be filed in redacted form. If, however, redaction is not feasible
24 based on the nature of the document or the purpose of it being submitted to
25 the Court, either prior to or contemporaneously with filing these documents
26 in a sealed manner, the party relying on the document shall file a motion to
27 seal any Attorneys' Eyes Only or Confidential material, regardless of which
28
29
30

**STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 8**

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 party has designated the materials as such. Such a motion to seal shall be
 2 noted for consideration after filing in accordance with LR 7.1. The party
 3 filing the motion to seal shall include an explanation justifying sealing the
 4 designated documents. If any documents or information included in the
 5 court filing were designated Attorneys' Eyes Only or Confidential by a non-
 6 moving party, that party may file a response in support of the motion to seal
 7 no later than two (2) judicial days before the hearing date showing why such
 8 materials should also be sealed.
 9

10 12. If the Court denies a motion to seal documents containing
 11 Attorneys' Eyes Only or Confidential material, the sealed document will be
 12 unsealed unless the court orders otherwise, or unless the party filing such
 13 material, after notifying the opposing party within two (2) judicial days of
 14 the court's order, files a notice to withdraw the documents.
 15

16 13. If the filing party withdraws the Attorneys' Eyes Only or
 17 Confidential material, the parties shall not refer to the withdrawn materials
 18 in any pleadings, motions and other filings, and the Court will not consider it.
 19

20 14. If any Attorneys' Eyes Only or Confidential material is used in
 21 any court proceeding in connection with this litigation, it shall not lose its
 22 Attorneys' Eyes Only or Confidential status through such use, and the parties
 23 shall take all steps reasonably required to protect its confidentiality during
 24 such use.

25 15. If Attorneys' Eyes Only or Confidential material is disclosed to
 26 any person other than in the manner authorized by this Agreement, the
 27 person responsible for the disclosure must immediately bring all pertinent
 28 facts relating to such disclosure to the attention of counsel for the
 29 designating party and, without prejudice to any other rights and remedies of
 30

1 the parties, make every effort to prevent further disclosure by it or by the
2 person who was the recipient of such information.

3 16. Nothing in this Agreement shall preclude any party to the
4 lawsuit or their attorneys (a) from showing a document designated as
5 Attorneys' Eyes Only or Confidential to an individual who either prepared
6 the document prior to the filing of this action, or is identified on the face of
7 the document as an addressee or copy addressee, or (b) from disclosing or
8 using, in any manner or for any purpose, any information or documents from
9 the party's own files which the party itself has designated as Attorneys' Eyes
10 Only or Confidential.
11

12 17. (a) When a disclosing party gives notice to receiving parties
13 that certain inadvertently produced material is subject to a claim of privilege
14 or other protection, the obligations of the receiving parties are those set
15 forth in Civil Rule 26(b)(6). This provision is not intended to modify
16 whatever procedure may be established in an e-discovery order or
17 agreement that provides for production without prior privilege review.
18 Parties shall confer on an appropriate non-waiver order under Federal Rules
19 of Evidence 502(d). The parties stipulate to the entry of an order regarding
20 the applicability of Federal Rules of Evidence 502(d) to this case.
21
22

23 (b) It is further ordered that pursuant to Federal Rules of
24 Evidence 502(d), the production of any documents in this proceeding shall
25 not, for the purposes of this proceeding or any other proceeding in any other
26 court, constitute a waiver by the disclosing party of any privilege applicable
27 to those documents, including the attorney-client privilege, attorney work
28 product protection or any other privilege or protection recognized by law.
29
30

**STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 10**

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)

1 18. Within sixty (60) days of the termination of litigation between
 2 the parties, all Attorneys' Eyes Only or Confidential material and all copies
 3 thereof shall be returned to the party which produced it or shall be
 4 destroyed. For Attorneys' Eyes Only or Confidential material saved on
 5 backup media in an electronically stored format, this material will be
 6 certified to have complied with the sixty (60) day period if the receiving
 7 party has a data destruction policy for the backup media resulting in the
 8 eventual destruction or overwriting of the electronically stored information.
 9 Counsel for each party shall be entitled to retain all pleadings, motion papers,
 10 legal memoranda, correspondence, and work product.

11 19. This Protective Order may be modified in the event that the
 12 parties agree in writing to a modification of the provisions hereof, or such
 13 modification is ordered by this Court. Nothing in this order precludes or
 14 restricts either party from bringing a motion before this Court seeking to
 15 modify this Protective Order.

16 20. **Special Rules related to disclosure of Defendant's Trade**
 17 **Secrets:**

18 (a) Defendant is not required, at the present time, to produce
 19 or otherwise disclose to Plaintiff those trade secrets identified as **PC**
 20 **Program** and **PLC Program**

21 (b) Defendant shall allow the **Build Drawings** and the
 22 **Electrical Schematic** for the Nitrogen Generators installed at Plaintiff's
 23 facility, as well as the **Electrical Schematic** for the CA Controller, to be
 24 reviewed by Plaintiff's expert, Mr. Jim Woolridge, in the office of Defendant's
 25 counsel, or at such other location as mutually agreed by the parties or
 26 ordered by the Court, but that such trade secret information shall not be

1 copied in any format, photocopied or otherwise disseminated by or to such
 2 expert or anyone else. Before allowing such review, Defendant shall mark
 3 each page of said documents as "***Trade Secret – Build Drawing***" or "***Trade***
 4 ***Secret – Electrical Schematic.***"

5 (c) Defendant shall allow the **Build Drawings** and the
 6 **Electrical Schematic** for the Carbon Dioxide Scrubbers installed at Plaintiff's
 7 facility, as well as the **Electrical Schematic** for the CA Controller, to be
 8 reviewed by Plaintiff's expert, Mr. Jim Schaefer the office of Defendant's
 9 counsel, or at such other location as mutually agreed by the parties (which
 10 can be at Tuff Automation in Michigan) or ordered by the Court, but that
 11 such trade secret information shall not be copied in any format, photocopied
 12 or otherwise disseminated by or to said expert or anyone else. Before
 13 allowing such review, Defendant shall mark each page of said documents as
 14 "***Trade Secret – Build Drawing***" or "***Trade Secret – Electrical Schematic;***"
 15 and
 16

17 (d) Notwithstanding any other provision in this Paragraph 20,
 18 Defendant's counsel shall, no later than January 6, 2015, provide a photocopy
 19 of the subject **Build Drawings** (for both the nitrogen generators and carbon
 20 dioxide scrubbers) and **Electrical Schematics** to Plaintiff's counsel for the
 21 exclusive use of deposing and conducting cross examination at trial of
 22 Defendant's representatives. These documents may not be used by Plaintiff's
 23 counsel for any other purpose whatsoever, and may not be disclosed to
 24 anyone else. At the conclusion of this litigation, all **Build Drawings** and
 25 **Electrical Schematics** in the possession of Plaintiff's counsel shall, within
 26 ten (10) days, be returned to Defendant's counsel.
 27
 28
 29
 30

1 Dated this 24th day of December, 2014.

2
3
4 s/Lonny R. Suko

5 THE HONORABLE LONNY R. SUKO
6 SENIOR UNITED STATES DISTRICT JUDGE

7 Presented by

8 Attorneys for Plaintiff

9 Attorneys for Defendants

10 By /s/ James. S. Elliott

11 James S. Elliott (WSBA #28420)

12 HALVERSON NORTHWEST

13 405 E. Lincoln Ave.

14 P.O. Box 22550

15 Yakima, WA 98907

16 Phone: (509) 248-6030

jelliott@halversonNW.com

By s/ James S. Berg

James S. Berg (WSBA #7812)

LARSON BERG & PERKINS PLLC

105 North 3rd St.

P.O. Box 550

Yakima, WA 98907

Phone: (509) 457-1515

jsberg@lbplaw.com

17
18
19
20
21
22
23
24
25
26
27
28
29
30
**STIPULATION AND PROTECTIVE ORDER RE
CONFIDENTIALITY OF DOCUMENTS
PRODUCED IN DISCOVERY - 13**

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 249-0619 (fax)